



# THE ATTORNEY GENERAL OF TEXAS

GERALD C. MANN  
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ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable E. Y. Cunningham  
County Auditor  
Navarro County  
Corsicana, Texas

Dear Sir:

Opinion No. 0-4985

Re: Under the facts submitted may the appointed County Treasurer of Navarro County accept the salary of \$1.00 a year as set by the Commissioners' Court, and related questions?

Your letter of recent date requesting the opinion of this department on the questions stated therein reads in part as follows:

"We have a very unusual situation that is about to develop in the office of the County Treasurer, which is as follows:

"The duly elected County Treasurer is going to take the oath of office on January 1st, 1943 and then immediately resign. My understanding of the law is that this office being vacated, it becomes the duty of the Commissioners Court to fill this vacancy. They plan to appoint some one who will be willing to serve for \$1.00 per. This office has been paying a salary of \$1,200.00 per year. The commissioners Court plan on applying this \$1,199.00 on a donation they expect to make toward the operation of a City-County Health unit which is to start operation January 1st, 1943.

"I would appreciate very much your giving me a ruling on the following questions:

"May the appointed County Treasurer accept the salary of \$1.00 per year as set by the Commissioners Court, May the Commissioners legally apply this \$1,199.00 toward their donation for the operation of this health unit? Or can the appointed County Treasurer accept the salary of \$1,200.00 per year and then make this donation to the unit

directly, or should they turn the \$1,199.00 back to the County and then let the County in turn apply these funds toward the City-County Health unit as a part of their budget obligation toward this unit, and would the Commissioners Court have the authority to so apply these funds when turned back to the County by the County Treasurer?

"If the County Treasurer may serve for a fee of \$1.00 per year then may this office receive commissions from the various funds, not to exceed the \$2,000.00 per year, for operating expense of the office of the County Treasurer?

". . . . ."

Navarro County has a population of 51,308 inhabitants according to the 1940 Federal Census.

Section 13, Article 3912e, Vernon's Annotated Civil Statutes, reads in part as follows:

"The Commissioners' Court in counties having a population of twenty thousand (20,000) inhabitants or more, and less than one hundred and ninety thousand (190,000) inhabitants according to the last preceding Federal Census, is hereby authorized and it shall be its duty to fix the salaries of all the following named officers, to-wit: . . . treasurer . . . Each of said officers shall be paid in money an annual salary in twelve (12) equal installments of not less than the total sum earned as compensation by him in his official capacity for the fiscal year 1935, and not more than the maximum amount allowed such officer under laws existing on August 24, 1935; . . . ."

You do not state in your letter the amount the County Treasurer earned in his official capacity for the fiscal year 1935. However, the Commissioners' Court of Navarro County has no legal authority or right to fix the salary of the County Treasurer at any sum or amount less than the total sum earned as compensation by him in his official capacity for the fiscal year 1935, and not more than the maximum amount allowed such officer under laws existing on August 24, 1935.

In the case of Williams v. Cass County, 147 S.W. (2) 588 in construing Section 13 of Article 3912e, supra, the court said:

" . . . Section 13 of said legislative act is applicable to Cass County, and authorizes the Commissioners' Court to fix the salaries of the county officers, including that of the treasurer, at a sum not less than the 'total sum earned as compensation by him in his official capacity for the fiscal year 1935.' . . . ."

In the case of Nacogdoches County v. Jenkins, 140 S.W. (2) 901 construing Section 13 of Article 3912e, supra, it was stated in part:

" . . . The terms of the statute authorizing the Commissioners' Court to fix the salary at any sum not less than a certain minimum and not more than a certain maximum, were mandatory and could not be ignored by the members of the court at their discretion. The order fixing appellee's salary at \$2,750 was without authority and void.

" . . . ." (Also see the case of Nacogdoches County v. Winder, 140 S.W. (2) 972 construing Section 13 of Article 3912e).

In view of the foregoing you are respectfully advised that the Commissioners' Court has no legal authority to fix the annual salary of the County Treasurer at the sum of \$1.00 per year. You are further advised that the office of the County Treasurer cannot receive commissions from the various funds in any amount for operating expenses of the office. There is no statutory or constitutional provision authorizing such procedure.

Article 4436a-1, Vernon's Annotated Civil Statutes, authorizes the Commissioners' Court of any county in this State containing an incorporated city having a population of not less than 90,000 inhabitants and not more than 120,000 inhabitants, as shown by the last preceding Federal Census, and the City Council of such city to cooperate in forming a city-county health unit and combine the health units of each political subdivision for such purpose, and appropriate funds to the combined health unit in such proportion as may be agreed to between said Commissioners' Court and said City Council. This statute also authorizes the Commissioners' Court and City Council after having determined by resolution and joint action of the court and the City Council that it is to the best interest of the county and the city to cooperate with one or more counties having a population of not more than 15,000 inhabitants in the operation of a health unit, to cooperate with such county or counties under such arrangement as may be en-

tered into between the City Council and the Commissioners' Court of said city-county health unit and the Commissioners' Court of said county or counties. Any county having a population of not more than 15,000 inhabitants which desire to cooperate with any city-county health unit created under the terms of the Act, may, through action of its Commissioners' Court, cooperate with said city-county health unit as provided in the Act.

As Navarro County has no city having the population designated in the statute and as said county has more than 15,000 inhabitants according to the last preceding Federal Census the statute (Article 4436a-1) is not applicable to Navarro County.

Article 4434, Vernon's Annotated Civil Statutes, provides:

"The municipal authorities of towns and cities, and commissioners courts of the counties wherein such towns and cities are situated, may co-operate with each other in making such improvements connected with said towns, cities and counties as said authorities and courts may deem necessary to improve the public health and to promote efficient sanitary regulations; and, by mutual arrangement, they may provide for the construction of said improvements and the payment therefor."

It will be noted that this statute does not authorize a city and county to cooperate in forming a city-county health unit as authorized by Article 4436a-1.

Article 4492, Vernon's Annotated Civil Statutes provides:

"Any commissioners court may co-operate with and join the proper authorities of any city having a population of ten thousand persons or more in the establishment, building, equipment and maintenance of a hospital in said city, and to appropriate such funds as may be determined by said court, after joint conference with the authorities of such city or town, and the management of such hospital shall be under the joint control of such court and city authorities."

As we understand your request, the question of the county and city cooperating in the establishment, building, equipment and maintenance of a hospital is not presented.

In view of the foregoing you are advised that cities and towns may cooperate to improve the public health and to promote efficient sanitary regulations as authorized by Article 4434, supra, and to establish, build, equip and maintain a hospital as provided by Article 4492, supra, but that Navarro County has no authority to cooperate with the City of Corsicana to establish and maintain a city-county health unit under Article 4436a-1, or any other statute we have been able to find.

For the purposes of this opinion we do not think it necessary to discuss the proposition as to what the County Treasurer may do with his salary after he has earned and received the same.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/Ardell Williams  
Ardell Williams  
Assistant

AW:mp:wc

APPROVED Jan 12, 1943  
s/Gerald C. Mann  
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/BWB Chairman